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FILED
DISTRICT COURT OF GUAM

SEP 21 2007

JEANNE G. QUINATA
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID EUGENE THOMAS,
Defendant.

CRIMINAL CASE NO.

07-00091

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C), the United States and the defendant, DAVID EUGENE THOMAS, enter into the following plea agreement:

1. The defendant, DAVID EUGENE THOMAS, agrees to enter a guilty plea to an Information charging him with Count I - False Alarms, in violation of Title 9, Guam Code Annotated, Section 55.20 and Title 18, United States Code, Sections 7(3) and 13; Count II- Disorderly Conduct, in violation of Title 9, Guam Code Annotated, Section 61.15(a)(1) and Title 18, United States Code, Sections 7(3) and 13; and Count III- Disorderly Conduct, in violation of Title 9, Guam Code Annotated, Section 61.15(a)(1) and Title 18, United States Code, Sections 7(3) and 13. Following sentencing, the United States will dismiss the Indictment in Criminal Case No. 07-00044.

1 2. The defendant understands that the maximum sentence for Count I of the Information,
2 False Alarms, a misdemeanor, is one (1) year imprisonment as set forth in 9 G.C.A. § 80.34 and
3 a fine or restitution not exceeding one thousand dollars (\$1000) as set forth in 9 G.C.A. § 80.50.
4 The defendant also understands that he will be subject to a \$25 special assessment fee, as set
5 forth in 18 U.S.C. § 3013. Any sentence of incarceration may include a term of supervised
6 release of not more than one year as set forth in 18 U.S.C. § 3583(b)(3). If the court revokes a
7 sentence of supervised release, the court may incarcerate the Defendant for not more than one
8 year as set forth in 18 U.S.C. § 3583(e)(3). The \$25 special assessment fee must be paid upon
9 sentencing.

10 2a. If the defendant is financially unable to immediately pay the fine in full, defendant
11 agrees to make a full disclosure of his financial status to the United States Attorney's Office by
12 completing a Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment
13 schedule. Defendant understands that, by law, interest accrues on any remaining balance of the
14 debt.

15 3. The defendant understands that the maximum sentence for Count II of the Indictment,
16 Disorderly Conduct, in violation of 9 G.C.A. § 61.15(a)(1), as a petty misdemeanor, is
17 imprisonment for not more than sixty (60) days as set forth in 9 G.C.A. § 80.34. The maximum
18 fine, together with restitution, for a petty misdemeanor may not exceed five hundred dollars
19 (\$500.00), as set forth in 9 G.C.A. § 80.50. The defendant is also required to pay a \$10 special
20 assessment fee as set forth in 18 U.S.C. § 3013. The \$10 special assessment fee must be paid
21 upon sentencing.

22 3a. If the defendant is financially unable to immediately pay the fine in full, defendant
23 agrees to make a full disclosure of his financial status to the United States Attorney's Office by
24 completing a Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment
25 schedule. Defendant understands that, by law, interest accrues on any remaining balance of the
26 debt
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1 4. The defendant understands that the maximum sentence for Count III of the Indictment,
2 Disorderly Conduct, in violation of 9 G.C.A. § 61.15(a)(1), as a petty misdemeanor, is
3 imprisonment for not more than sixty (60) days as set forth in 9 G.C.A. § 80.34. The maximum
4 fine, together with restitution, for a petty misdemeanor may not exceed five hundred dollars
5 (\$500.00), as set forth in 9 G.C.A. § 80.50. The defendant is also required to pay a \$10 special
6 assessment fee as set forth in 18 U.S.C. § 3013. The \$10 special assessment fee must be paid
7 upon sentencing.

8 4a. If the defendant is financially unable to immediately pay the fine in full, defendant
9 agrees to make a full disclosure of his financial status to the United States Attorney's Office by
10 completing a Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment
11 schedule. Defendant understands that, by law, interest accrues on any remaining balance of the
12 debt.

13 5. The defendant understands that to establish a violation of False Alarms, in violation of
14 Title 9, Guam Code Annotated, Section 55.20 and Title 18, United States Code, Sections 7(3)
15 and 13, the government must prove each of the following elements beyond a reasonable doubt:

16 First, that the defendant caused a false emergency to be transmitted to an organization
17 that responds to emergencies involving danger to life and property,

18 Second, that when the defendant caused the false emergency, he did so with knowledge of
19 its falsity, and

20 Third, that the offense occurred on land acquired for the use of the United States and
21 under the concurrent jurisdiction thereof.

22 6. The defendant understands that to establish a violation of Disorderly Conduct, in
23 violation of Title 9, Guam Code Annotated, Section 61.15(a)(1), as assimilated by Title 18
24 United States Code, Sections 7(3) & 13, the government must prove each of the following
25 elements beyond a reasonable doubt:

26 First, that the defendant engaged in tumultuous behavior,

27 Second, that such behavior recklessly created a risk of public annoyance,
28

1 Third, that the defendant persisted in the disorderly conduct after reasonable request to
2 desist; and

3 Fourth, that the offense occurred on land acquired for the use of the United States and
4 under the concurrent jurisdiction thereof.

5 7. The defendant understands that the Sentencing Guidelines are advisory only. The
6 government and the defendant stipulate to the following facts for purposes of the sentencing:

7 a. The defendant was born in 1957, and is a citizen of the United States.

8 b. That on or about April 27, 2007, in the District of Guam, the defendant, DAVID
9 EUGENE THOMAS, at U.S. Naval Hospital located on U.S. Naval Base Guam, on land
10 acquired for the use of the United States and under the concurrent jurisdiction thereof, did, with
11 knowledge of its falsity, cause a false emergency to be transmitted to an organization that
12 responds to emergencies involving danger to life and property, to wit, U.S. Navy Explosive
13 Ordinance Disposal Unit Five. That the defendant caused the false emergency by stating that he
14 might have a knife, a 9 millimeter, an AK-47, or even a bomb in response to a question asking
15 the defendant whether he had anything in his backpack that may harm someone. That U.S. Navy
16 Explosive Ordinance Disposal Unit Five is an organization that responds to emergencies
17 involving danger to life and property.

18 c. That on or about April 25, 2007, in the District of Guam, the defendant, DAVID
19 EUGENE THOMAS, at Andersen Air Force Base Guam, on land acquired for the use of the
20 United States and under the concurrent jurisdiction thereof, did engage in tumultuous behavior
21 during a softball game held at Andersen Air Force Base softball field. That the defendant,
22 DAVID EUGENE THOMAS, behavior recklessly created a risk of public annoyance. That the
23 defendant, DAVID EUGENE THOMAS, persisted in disorderly conduct after reasonable request
24 to desist. That the defendant, DAVID EUGENE THOMAS, asked Lara Thomas if her dogs
25 would attack him if he were to take her baby from her. That when Lara Thomas tried to walk
26 away from the defendant, DAVID EUGENE THOMAS, continued to pursue her and her dogs.
27 That Lara Thomas, and others, subsequently contacted the Air Force's security force.
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1 d. That on or about April 26, 2007, in the District of Guam, the defendant, DAVID
2 EUGENE THOMAS, at the Subway Restaurant located on Andersen Air Force Base Guam, on
3 land acquired for the use of the United States and under the concurrent jurisdiction thereof, did
4 engage in tumultuous behavior. That the defendant, DAVID EUGENE THOMAS', behavior
5 recklessly created a risk of public annoyance. That the defendant, DAVID EUGENE THOMAS,
6 persisted in disorderly conduct after reasonable request to desist. That the defendant, DAVID
7 EUGENE THOMAS, told Kirsten Mayhew that her husband should not allow him to talk to her
8 because he could be a serial killer like Ted Bundy or John Wayne Gacy. That the defendant,
9 DAVID EUGENE THOMAS, followed the husband and his minor child into a bathroom near
10 the Subway restaurant after the husband told the defendant not to touch him in response to the
11 husband being slapped by the defendant on the arm. That the defendant, DAVID EUGENE
12 THOMAS, stated to the husband in the presence of his minor son in the bathroom "Sorry about
13 touching you. I see how it is, I'm just a nigger. Oh, I'm sorry master for touching you. You
14 cracker. That's right, I'm a nigger and you're a cracker."

15 8. The parties agree the appropriate disposition of the case is a sentence of time served,
16 along with the special assessment fees and no period of supervised release. The defendant has
17 been in custody since April 27, 2007.

18 9. The defendant agrees to waive any right to appeal or to collaterally attack his
19 conviction. The defendant reserves the right to appeal the sentence actually imposed in his case.

20 10. The defendant acknowledges that he has been advised of his rights as set forth below
21 prior to entering into his plea agreement. Specifically, defendant has been fully advised of, has
22 had sufficient opportunity to reflect upon, and understands the following:

23 a. The nature and elements of the charge and the maximum possible penalty provided
24 by law;

25 b. His right to be represented by an attorney;

1 c. His right to plead not guilty and the right to be tried by a jury and at that trial, the
2 right to be represented by counsel, the right to confront and cross-examine witnesses against him,
3 and the right not to be compelled to incriminate himself, that is, the right not to testify;

4 d. That if he pleads guilty, there will not be a further trial of any kind on the charges to
5 which such plea is entered so that by entering into his plea agreement, he waives, that is, gives
6 up, the right to a trial;

7 e. That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
8 about the offenses to which he has pled, under oath, and that if he answers these questions under
9 oath, on the record, his answers may later be used against him in prosecution for perjury or false
10 statement if an answer is untrue;

11 f. That he agrees that the plea agreement is voluntary and not a result of any force,
12 threats or promises apart from the plea agreement;

13 g. That he reads, writes and speaks the English language and has no need for an
14 interpreter;

15 h. That he has read the plea agreement and understands it; and

16 i. The Defendant is satisfied with the representation of his lawyer and feels that his
17 lawyer has done everything possible for his defense.

18 DATED: 9/20/07

David Eugene Thomas
DAVID EUGENE THOMAS
Defendant

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20 DATED: 9/20/07

John Gorman
JOHN GORMAN
Federal Public Defender

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22
23
24 DATED: 9/21/07

By: Ryan M. Anderson
RYAN M. ANDERSON
Special Assistant U.S. Attorney

25
26 DATED: 9/21/07

Jeffrey J. Strand
JEFFREY J. STRAND
First Assistant U.S. Attorney